CRIMINAL APPEAL No.29 OF 1988
With
CRIMINAL APPEAL NO.75 OF 1988
***

Against the judgment and order dated 19.12.1987 passed by Sri Agapit Toppo, 3rd Additional District & Sessions Judge, Gopalganj in Sessions Trial No. 27/1986 / 1/1986.
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(In Cr.Appeal No.29/1988)
1.Rama Singh
2.Bishwanath Singh
3.Binda Singh----------Appellants
Versus
The State of Bihar----------Respondent
***

(In Cr.Appeal No.75/1988)
1.Krishna Singh
2.Ramnath Singh----------Appellants
Versus
The State of Bihar----------Respondent
***

For the Appellants :- Mr. Kanhaiya Pd.Singh, Sr. Advocate with
M/s Ganesh Pd. Singh, Nachiketa Jha and
Atal Bihari, Advocate
For the State :- Mr. Lal Kailash Biahri Prasad,
Sr. Advocate
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P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE SYED MD.MAHFOOZ ALAM
***

S.M.M.Alam, J. These two criminal appeals are directed against the judgment and order dated 19.12.1987, passed by the 3rd Additional District & Sessions Judge, Gopalganj, in Sessions Trial No.27/86 /1/86, whereby he has been pleased to convict appellants Krishna Singh and Ramnath Singh under Sections 302 of the Indian Penal Code, and Section 27 of the Arms Act, and sentenced each of them to undergo rigorous imprisonment for life under Section 302 of the I.P.C., and rigorous imprisonment for five years under Section 27 of the Arms Act. He has further been pleased to convict appellant Rama Singh for the offence under Sections 302/149 and 307 of the I.P.C., and sentenced him to undergo

rigorous imprisonment for ten years under Section 302/149 of the I.P.C., and further rigorous imprisonment for ten years under Section 307 of the I.P.C. Besides that, he has also been convicted under Section 27 of the Arms Act and sentenced to undergo R.I. for five years. Appellant Bishwanath Singh has been convicted under Section 302/149 of the I.P.C., and sentenced to undergo R.I. for eight years. He has further been convicted for the offence under Section 323 of the I.P.C., and sentenced to undergo R.I. for one year. Appellant Binda Singh has also been convicted for the offence under Section 302/149 of the I.P.C., and sentenced to undergo R.I. for seven years for the said offence. The learned Additional Sessions observed that all the sentences shall run concurrently.

2. The prosecution case, as per the fardbeyan of the informant, Vidya Singh (P.W.3), recorded by S.I. Sagar Das of Gopalganj Police Station on 8.6.1984, at 5 A.M., at Gopalganj Hospital, in brief, is that in between the night of 7/8.6.1984, he (informant) was sleeping at his Darwaja on a cot along with his mother. By the side of the said cot, his younger brother Yogendra Singh (P.W.1) was also sleeping on another cot. At about 1.15/1.30 A.M., he woke up on hearing a loud sound. Others also woke up. Thereafter he saw five persons surrounding him. On seeing them, his mother pushed him (informant) and he fell down in **Dogaha**. He flashed torch light and in the torch light he identified his co-villagers, namely, Krishna Singh son of Babu Ram Singh, Ramnath Singh son of Ambika Singh, Bishwanath Singh son of Vikrama Singh, Binda Singh son of Abhiram Singh, and Rama Singh of village Kararia. Amongst them, Krishna Singh, Ramnath Singh, and Rama Singh were armed with guns. Bishwanath Singh was armed with bhala. Binda Singh had Farsa in his hands. The informant and others started raising hulla. In the meantime, his mother caught hold

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of Ramnath Singh whereupon appellant Krishna Singh started trying to release him and he succeeded in getting Ramnath Singh released. Thereafter Krishna Singh did three firings from his gun. Ramnath Singh also did firing. The first shot done by Krishna Singh missed. The second and third shots fired by Krishna Singh and Ramnath Singh hit the mother of the informant then Rama Singh opened fire which hit informant's younger brother Yogendra Singh. While the informant was trying to flee away inside his house and wanted to drag away his mother, Bishwanath Singh attacked him with bhala fitted with lathi and the lathi portion caused injury on his waist. On hulla raised by the informant and others, Yadu Nath Mishra, Minister Tiwary, Kalam Mian, and several others reached there and then all the accused persons fled away. Having been injured, his mother succumbed to his injuries. Thereafter the informant took the dead body of his mother to Sadar Hospital on a bullock cart along with his injured brother. The informant and his brother were admitted to the hospital for treatment where his fardbeyan was recorded. The motive of the occurrence was old enmity and a day before the occurrence the appellants had given threat to kill the informant and informant's brother Keshav Singh had informed Ramayan Bhagat and Sudarshan Bhagat with regard to the said threats.

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3. S.I.Sri Sagar Das of Gopalganj Police station recorded the said fardbeyan in presence of two witnesses, namely, Ram Bishun Ram and Mohan Singh and both the witnesses put their signatures on the fardbeyan. The said fardbeyan was forwarded to the Officer Incharge of Gopalganj Police Station and on the spot, S.I. Sri Sagar Das took up investigation. On receipt of the said fardebyan in Gopalganj P.S., Gopalganj P.S. Case No.135 dated 8.6.1984, under Sections 302, 307, 324 and 323/34 of the Indian Penal Code and under Section 27 of the Arms Act was instituted and after investigation charge sheet was submitted against the appellants. Thereafter the appellants

were committed to the Court of Sessions. On 14th June, 1986, Charges under different heads were framed against the appellants by Additional District & Sessions Judge, Gopalganj. The appellants denied the charges and hence, they were tried and by the impugned judgment, they were convicted.

4. The learned Advocate of the appellants while arguing vehemently criticized the findings of the trial court and submitted that the findings of the trial court are not based upon judicious scrutiny of the evidence of the prosecution witnesses rather the same are based merely on conjectures and surmises. He submitted that the quantum of sentence awarded to appellant Rama Singh for ten years R.I. Bishwanath Singh for eight years and Binda Singh for seven years under Section 302/149 of the I.P.C. is not according to law.

5. At the very outset, I would like to state that the learned trial court has committed grave error of law by awarding sentence of ten years, eight years and seven years respectively to appellants Rama Singh, Bishwanath Singh and Binda Singh, under Section 302/149 of the I.P.C. and the learned Sessions Judge had no jurisdiction to award sentence less than life imprisonment under Section 302 read with Section 149 of the Indian Penal Code. In such view of the matter, I fully agree with the argument of the learned Advocate of the appellants that by awarding sentence of ten years, eight years and seven years to appellants,, Rama Singh, Bishwanath Singh and Binda Singh, the learned trial court has committed grave error of law. Now I will examine as to whether the findings of the trial court are based on the materials available on record and whether the prosecution had succeeded in proving its case beyond shadow of all reasonable doubts.

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6. From perusal of the lower court records and the judgment of the trial court, it appears that in order to prove the case, the prosecution has examined altogether 11 witnesses,

namely, Yogendra Singh P.W.1, Keshav Singh P.W.2, Vidya Rai P.W.3. Ramashray Prasad P.W.4, Kalamuddin Mian P.W.5, Yadunath Mishra P.W.6, Manata Devi P.W.7, Ramayan Prasad P.W.8, Sagar Das P.W.9, Dr. R.B.Choudhary P.W.10, and Dr. H.P.Singh P.W.11. Besides oral evidence, fardbeyan of the informant Vidya Rai is Ext.1; Formal F.I.R. is Ext.2; inquest report of Mostt. Banmatto is Ext.3; Requisition slips with regard to injury of Yogendra Singh and Vidya Rai issued by Investigating Officer are Exts. 4 and 4/1; post mortem report of Banmatto Devi is Ext.5 and injury reports of Yogendra Singh and Vidya Rai are Exts. 6 and 6/1.

7. It appears that the defence has also examined four witnesses, namely, Bhoj Mishra D.W.1, Kapildeo Singh D.W.2, Keshwar Mishra D.W.3, and Raj Kishore Singh D.W.4. Besides oral evidence, the defence has also brought certain documentary evidence on record. Exts. A and A/1 are two certificates as well as prescription issued by Dr. Nand Kumar Singh in connection with the treatment of appellant Ram Nath Singh. The defence has taken the plea that appellant Ram Nath Singh, who was the Headmaster of Bala Prathmik Vidyalya, was ill on the alleged date and time of occurrence and was under the treatment of Dr. Nand Kumar Mishra. Ext.B is the service report of summons. Ext.C is the informatory petition, and Ext.D. is the true copy of the informatory petition filed by Dargo Rai in the year 1983.

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8. Out of 11 witnesses examined on behalf of the prosecution, P.W.3 Vidya Rai is the informant of this case, P.W.1 Yogendra Singh is the own brother of the informant who is said to have received fire-arm injury at the time of the alleged occurrence; P.W.2 Keshav Singh is another brother of the informant; P.W.7 Manata Devi is own sister of the informant; P.W.9 Sagar Das is the Investigating Officer of this case, P.W.10 is Dr. R.B.Choudhary, who had examined injuries of P.W.1 Yogendra Singh and informant Vidya Rai. P.W.11 Dr.

H.P.Singh is another doctor who had conducted post mortem examination on the dead body of the deceased Banmatto Devi. The remaining witnesses i.e. P.Ws. 4, 5, 6 and 8 are the co-villagers of the informant but they have not stated anything in their deposition implicating these appellants which goes to establish that none of the independent witnesses has supported the prosecution case. Thus, the prosecution case is based upon the testimony of interested witnesses.

9. In order to come to the conclusion that the abvoesaid witnesses are trustworthy or not, I would like to reproduce the evidence of P.Ws.1, 2, 3 and 5 and I will scrutinize their evidence to conclude - whether the finding of the trial court is correct or not.

10. First of all, I would like to see – whether the death of Panmatto Devi was homicidal caused by firearm injuries ? In order to come to the conclusion that the death of Mostt. Panmatto Devi was homicidal, I find sufficient materials on record. In this regard, the post-mortem report (Ext.5), inquest report (Ext.3) and the evidence of P.W.11 Dr. H.P. Singh are relevant. I would like to reproduce the evidence of P.W.11 Dr. H.P. Singh. His evidence is that he had conducted post-mortem examination on the dead body of Panmato Devi and had found the following ante-mortem injuries on her body :-

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(i) Multiple pellets injuries on the right thigh medial and frontal parts below. The inguinal ligament with charred margin around the entrants of the pellets and simultaneously there were exits of the pellets wounds on the thigh lateral aspect.

(ii) Multiple pellets wound on the lower part of the right side of abdomen with charred margin and there was no exit of the wound.

(iii) One pellet injury of the right deltoid muscle of the arm and the pellet was out through the wound.

He has further deposed that on dissection he found that the liver was injured by the pellets and four pellets were recovered from the abdomen. The intestine was found perforated on three places. Abdominal cavity was full of blood and blood clot. Thigh right side was dissected and there was haemorrhage on the muscle and it was injured. He has further deposed that in his opinion the death was due to shock and haemorrage resulted from the pellet injuries on the abdomen which were sufficient to cause death in ordinary course of nature. He has proved the post mortem-report which has been marked as Ext.5.

From perusal of the evidence of P.W.11, as well as the post-mortem report (Ext.5), it is established beyond doubt that the death of Mostt. Panmatto Devi was homicidal caused by pellet injury that is of fire-arm injury. Since it is established that the death of Panmatto Devi was homicidal caused by firearm injuries, so I would try to find out from the materials available on record as to whether the prosecution case that those injuries were caused by these appellants is correct or not. In this regard first of all, I would like to incorporate the evidence of P.W.3 Vidya Rai because he is the informant of this case. His evidence is as follows:-

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About more than two years ago at about 12/1.00 A.M. in the night, he was sleeping at his darwaja on a cot along with his mother. His brother Yogendra (P.W.1) was also sleeping on another cot at his west. His mother woke up on hearing the sound of explosion of bomb but he could not awake on the sound of explosion of bomb rather his mother awoke him and asked him to flee away inside the house. The informant started fleeing away in hurry then appellant Ram Nath tried to catch hold of him. In the meantime, his mother caught Ram Nath by

his waist and pushed him (P.W.3) as a result of which he fell down on **Dogaha**. He flashed torch whereupon the accused persons stared firing and in the torch light he identified Ram Nath Rai, Krishna Rai, Bishwanath Rai, Binda Rai and Rama Rai. Krishna Rai, Ramnath Rai and Rama Rai were armed with gun, Bishwanath Rai was armed with Bhala and Binda Rai was armed with farsa. Krishna opened first fire but nobody was injured from his firing. Second fire was done by Ram Nath which hit his mother. Krishna Singh again opened fire and the bullet hit his brother Yogendra. Bishwanath Rai assaulted him with lathi fitted with Bhala. P.W.3 has further deposed that his mother died on the spot. He has further deposed that the accused persons had come to kill him as Krishna had taken Rs.600/- as loan from him and about 15-20 days ago he (P.W.3) had asked him to return the loan whereupon he had threatened him to kill him by exploding bomb. He has further deposed that he had informed Sarpanch Ramashray Prasad with regard to the said incident. He has further deposed that on the day of occurrence also, Ram Nath had given threat that he would be killed. He has deposed that he was admitted to the hospital where his fardbeyan was recorded.

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In cross-examination he has admitted that one Swami Nath had instituted a case under Section 326 and 307 of the I.P.C. against him. He has also admitted that he was also an accused in the attempt to murder case of Islam Mian. He has also admitted that Abhiraj Rai of Ekderwa had instituted a criminal case against him for committing theft of sugarcane. At paragraph 25 of his cross-examination, he has admitted that one Devendra Prasad had also instituted the case of attempt to murder under Section 307 of the Indian penal Code and under the Arms Act. The above admission of P.W.3 shows that some other persons were also on inimical terms with the informant

and amongst them, Swami Nath, Islam Mian and Abhiraj Rai were the persons who were inimical to the informant.

11. The learned Advocate appearing on behalf of the appellants has argued that paragraphs 7, 8 and 9 of deposition of P.W.3 establishes beyond doubt that some other persons had also grudge against the informant and that the informant was not a man of clean antecedents, so there is every possibility that the crime was committed by some other persons and the appellants were falsely implicated. The argument of the learned Advocate of the appellants has got some weight specially when the independent witnesses of the locality have not supported this fact that the crime was committed by these appellants although they (P.Ws.4, 5, 6 and 8) have deposed that on the alleged night of occurrence they had gone to the house of the informant and had seen the dead body of his mother and had also seen the injury on the persons of the informant and his brother but they have not stated that the informant or any member of his family disclosed the names of appellants as the assailants.

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12. P.W.3 has further deposed in his cross-examination that Dargo Singh of Kakarkund was his brother-in-law, being the husband of his sister Manata Devi (P.W.7). He has further admitted that his said brother-in-law had purchased some land in his village and although he has denied this suggestion that he wanted to grab the said land of Daroga Singh but his own sister Manata Devi who is the wife of the said Daroga Singh, admitted at paragraph 14 of her deposition that with the consent of all her Naihar people she had executed sale deed with respect to her land and house in favour of her brother. P.W.7 has admitted this fact when this question was put to her by the court:- whether she had sold the lands of her husband to her brother she gave the above reply. This admission of P.W.7 further establishes that her husband Dargo Singh was also on inimical terms with the informant as well as his

family members including P.W.7 Manata Devi. All these facts which are on record establish beyond doubt that the informant and his family members had enmity with several persons and not alone with the present appellants.

13. P.W.1 Yogendra Singh is the own brother of the informant. He is also one of the injured. He has supported the prosecution case in his evidence. He has deposed that in the night of occurrence at about 1.30 A.M. he was sleeping at his Darwaja on a cot. Besides him, his brother (Vidya) was also sleeping on another cot with his mother. His sister Manata Devi and his another brother Keshav Singh were sleeping in a **Palani** at a distance of about 20 to 25 yards. He woke up on hearing the sound of firing. He saw five persons at his Darwaja. They all had surrounded the cot of his brother. His brother and mother also woke up and then Krishna Singh opened fire but no one sustained injuries. Second fire was done by Ram Nath Singh which hit his mother. He again fired which again caused injury to his mother. Rama Singh also opened two firings as a result of which he (P.W.1) sustained injuries at his thigh and on his private part. Then Bishwanath Singh assaulted his brother Vidya Singh (informant) with lathi fitted with Bhala. He has further deposed that Vidya Singh flashed torch and in the torchlight he identified all the accused persons. His mother died at the spot. The injured were treated at Gopalganj Hospital. At paragraph 14 of his cross-examination he has deposed that he was on inimical terms with the appellant Krishna Singh due to difference in money transaction in between them. At paragraph 19 of his cross-examination, this witness has deposed that he was sleeping on the cot just at a distance of 2-3 steps west from her mother and all the five accused persons surrounded the cot of his mother on which his brother was also sleeping, from all sides and then they opened fire. At paragraph 27 he has

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deposed that the night was dark. At paragraph 32, P.W.1 has deposed that on hearing hulla his sister Manata Devi, and his brother Kesho Singh, fled away from Bathan to Palani of accused Ram Nath which is situated adjacent east to the house of Ram Nath. At paragraph 25 he has admitted that accused Ram Nath Singh had constructed his Palani on 3 ½ dhurs of land belonging to him. He has further deposed that he had asked him to hand over the possession of 3 ½ dhurs of land belonging to him but Ram Nath Singh constructed bungalow over the same about 10-15 years back for which Panchayati was also convened but Ram Nath Singh was not ready to hand over the possession. This goes to show that the informant and his family members were inimical to Ram Nath Singh as according to P.W.2, Ram Nath Singh had grabbed his land. At paragraph 36 this witness has deposed that a 144 Cr.P.C. proceeding was going on between the father of appellant Binda, namely, Abhiraj Singh and his brother Vidya Singh (informant). This admission has come to show that the informant as well as his family members were inimical with another accused, namely, Binda Singh.

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14. P.W.2 Kesho Singh is another brother of the informant. He has also come to depose as an eye-witness of the occurrence. According to him, at the time of occurrence he was sleeping at his Bathan situated at a distance of 20 to 25 steps from the place of occurrence. At that place his sister Manata Devi was also sleeping but Manata Devi (P.W.7) has denied this fact. According to the statement of Manata Devi, she was sleeping inside her house. P.W.2 has further deposed that on hearing the sound of explosion of bomb he woke up. His sister Manata Devi also woke up and then both the persons fled away in the Palani of Ram Nath Singh (accused) and from there he saw the entire occurrence. He has further deposed that he saw all the five appellants surrounding his brother Vidya Singh. Ramnath Singh, Krishna Singh and Rama Singh were armed with gun, Bishwanath Singh was armed with Bhala and Binda had Farsa in

his hand. His mother and his brothers, namely, Yogendra Singh and Vidya Singh woke up and his mother caught hold of Ram Nath Singh and simultaneously she pushed Vidya Singh who fell down in the corner. He has further deposed that he also heard Ramnath Singh exhorting Krishna Singh to open fire quickly whereupon Krishna Singh opened fire which did not hit anybody then Ram Nath opened fire which hit his mother. Krishna Singh again opened fire which also hit his mother. Thereafter Rama Singh opened fire and due to firing done by Rama Singh, his brother Yogendra (P.W.1) sustained injuries. He has further deposed that Bishwanath Singh assaulted Vidya Singh with lathi portion of Bhala. He has further deposed that he had identified all the accused persons in the torchlight. He has further deposed that after the occurrence all the accused persons fled away then he took his mother and other injured persons to Hospital on a bullock-cart. **At paragraph 14 of his cross-examination, this witness has deposed that he has got Pucca house with cemented roof and there are altogether seven rooms in his house with one courtyard. The Darwaja of the house faces north.** At paragraph 21 this witness has deposed that when first firing was done at that time his mother and his brother Vidya Singh were sleeping on the same cot and at that time he (P.W.2) was in the Palani of Ram Nath Singh (appellant). He has again stated that the second and third firings were done simultaneously and when second and third firings were done at that time Vidya Singh was very much present near the cot. At paragraph 23 he reiterated that he identified accused persons in the torch light flashed by Vidya Singh. At paragraph 27 of the cross-examination the defence has given suggestion to this witness that there was illicit relation of Vidya Singh with his own sister Manata which was not liked by her mother, and due to that Vidya along with his other brothers killed their mother and thereafter they falsely

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implicated the appellants. At an appropriate stage, I would like to consider this aspect of the case also. At paragraph 29 this witness has stated that he had seen the entire occurrence from Palani of appellant Ram Nath Singh which is situated at a distance about 50 yards.

15. P.W.7 Manata Devi is the own sister of the informant. She has also deposed like an eye-witness of the occurrence. Her evidence is that in the alleged night of occurrence she was sleeping in her house which has been separately built from the house of the informant. This house is brick built thatched house situated at a distance of 20 to 25 steps north from her parent's house. She has further deposed that when she heard the sound of explosion of bomb she woke up and thereafter she along with her brother Kesho Singh went inside the Palani of Ram Nath Singh from where she saw the entire occurrence in the torch light flashed by her brother Vidya Singh. She also claimed to have identified all the appellants in the torch light. She has stated that the first fire was done by Krishna Singh which did not hit anybody then Krishna Singh and Ram Nath both opened fire and the bullet hit her mother. She has further deposed that Bishwanath assaulted Vidya Singh with lathi fitted Bhala. She has further deposed that due to firing done by Rama Singh, her brother Yogendra Singh also sustained injuries. She has admitted that her relation with her mother-in-law is not cordial and so for the last five years, she was residing in her **Naihar**. At paragraph 13 she has admitted that her husband was not alive but what happened to him she does not know. At paragraph 16 she has deposed that her husband had left visiting her house at her **Naihar** from two months before the date of occurrence. At paragraph 20 she has deposed that Krishna Singh had opened fire when her mother and her brothers were sleeping on the cot. On query made by the court, she replied that firing was done from a distance of 4-5

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steps and simultaneously second and third firings were also done. She has further deposed that there was blood-stained marks on the cot as well as bedsheet. At paragraph 29 she has deposed that she saw all the accused persons (appellants) surrounding the cot on which her brother and mother were sleeping. At paragraph 30 she said that her brother Yogendra Singh was sleeping on another cot adjacent to the cot of her mother. She has further deposed that he (Yogendra) sustained firearm injury while he was sleeping. She has further deposed that even after sustaining the firearm injuries her bother Yogendra remained lying on the cot.

16. From the evidence of the abovesaid witnesses, it appears that P.Ws. 1, 2, 3 and 7 have categorically stated that the appellants had caused the death of Panmatto Devi by means of firearm. Whether P.Ws.1, 2, 3 and 7 are trustworthy witnesses, I would like to scrutinize their evidence in the following paragraphs.

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17. At this stage I would like to point out that the independent witnesses, namely, Ramashray Prasad P.W.4, Kalamuddin Mian P.W.5, Yadunath Mishra (P.W.6) and Ramayan Prasad P.W.8 have not supported the prosecution case that the appellants had caused the death of Panmatto Devi by means of firearm and had also caused injury to P.W.1 Yogendra Singh and informant Vidya Singh. All the abovementioned witnesses have deposed that in the very night on hearing sound of firing they all had gone to the house of the informant and had seen the dead body of the mother of the informant and had also seen P.W.1 Yogendra with firearm injuries but they have categorically deposed that Vidya Singh or any person did not tell them that the appellants had caused the death of deceased Panmatto Devi with firearm injuries and that they had caused injuries on the person of informant and his brother Yogendra. Thus, there cannot be two views that the independent witnesses have not supported the prosecution case. However, it is well

settled law that the evidence of the interested witnesses cannot be discarded merely on the ground that they are closely related to each other but their evidence should be dealt with cautiously and if it is found that they are trustworthy then their testimony should be relied upon. Let me see- whether P.Ws. 1, 2, 3 and 7 can be said to be trustworthy witnesses.

18. As per the prosecution case, on the alleged night of occurrence the informant along with his mother was sleeping on a cot in the Sahan outside his house and adjacent to his cot there was another cot of his brother on which P.W.1 Yogendra Singh was sleeping. I have found in the evidence of the prosecution witnesses and I have mentioned it above that the witnesses have admitted that the informant's house is pucca built house having seven rooms with cemented roof. A courtyard is also attached with the said house. I am unable to understand that when there were seven rooms in the house of the informant and the courtyard was also attached with the pucca house of the informant why the informant, his mother and his brother (P.W.1) were sleeping outside the house in an open space called "Sahan" when there is evidence that they had apprehension from the side of the appellants due to some quarrel taking place on the matter of advance of loan by the informant. Not only this, there is also no satisfactory explanation why another brother of the informant (P.W.2) and his sister Manata Devi(P.W.7) were also sleeping outside the house. This creates a doubt in my mind that Sahan is not the actual place of occurrence and my doubt finds support from the evidence of the Investigating Officer who has been examined as P.W.9 in this case. His evidence is that after recording the fardbeyan he prepared the inquest report of the deceased. He has proved the said inquest report which has been marked Ext.3. Column 4 of inquest report (Ext.3) mentions that the dead body was found lying on the cot but there is no mention that there was any stains of blood on the cot. Likewise

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coloumn-7 mentions the clothes which the deceased was wearing at the time of preparation of inquest report but there is no mention that the Investigating Officer had found the stains of blood on the clothes of the deceased. If the Investigating Officer would have found the stains of blood on the cot as well as on the body of the deceased he might have prepared seizure report of the same. The evidence of the Investigating Officer is that neither he seized the cot nor the clothes which the deceased was wearing at that time. This clearly establishes that neither on the cot nor on the clothes of the deceased the Investigating officer had found blood. The non-presence of blood on the cot on which the deceased was murdered and the non-presence of blood on her clothes clearly establishes that the deceased Panmatto Devi was neither murdered on that very cot nor at the time of murder she was wearing those clothes which were found on her body at the time of preparation of inquest report otherwise the clothes of the deceased would have been found soaked with blood and also with mark of entrance of pellets on the body. So the story that the deceased had sustained fire-arms injury while she was sleeping on the cot with the informant at her Sahan is very doubtful story.

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The evidence of the doctor (P.W.11) is that on post mortem of the dead body of Panmato he has found three ante mortem injuries. Firstly pellet injuries on the right thigh medial and frontal part below the inguinal ligament with charred margins around the entrants of the pellets and simultaneously there were exits of the pellets wounds on the thigh lateral aspect.

Secondly xxx xxx xxx xxx xxx

Thirdly one pellet injury on the right deltoid muscle of the arm and the pellet was out through the wound.

Thus, the evidence of P.W.11 shows that at least two injuries on the person of the deceased had exit also but the

evidence of the Investigating Officer (P.W.9) is that he did not recover any pellet from the place of occurrence. Likewise first shot fire by appellant Krishna Singh was also missed but the bullet or the pellets were not recovered from the place of occurrence which also establishes that Sahan is not the actual place of occurrence. Likewise the evidence of the I.O. that he did not find any blood at the place of occurrence also establishes that the Sahan of the informant's house is not the actual place of occurrence although the Investigating Officer has volunteered that due to heavy rain the blood at the place of occurrence was washed out but in view of his admission that not a single witness has stated before him that in the night of occurrence there was heavy rain so this statement of the informant that due to heavy rain the blood was washed out cannot be believed. Likewise his statement that he had found the mark of explosion of bomb at the place of occurrence cannot be believed as he did not seize any splinters of bomb from the said place. These facts also prove that the Sahan of the informant is not the actual place of occurrence. Another circumstance which compels me to understand that the Sahan is not the actual place of occurrence is the removal of the dead body of the deceased Panmatto Devi along with the cot from the place of occurrence. Admittedly, Panmatto had died immediately after sustaining firearms injury and this fact was known to the informant as well as to his brothers then why her dead body along with the cot on which she was murdered were removed from the place of occurrence the prosecution has got no satisfactory explanation in this regard and in my view it was most unnatural conduct on the part of the informant and his brothers. I am of the view that it was an attempt on the part of the informant to destroy the evidence of murder which goes against the prosecution.

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19. Another aspect which establishes that Sahan of the informant is not the actual place of occurrence is the

statement of the Investigating Officer at paragraph 11 of his evidence in which he has deposed that he found the mark of gun firing on the wall inside the house of the informant. This statement of the Investigating Officer goes to show that something had happened inside the house of the informant and that is why the informant and the witnesses, who are the own brothers and sister of the informant, removed the dead body of Panmatto Devi with the cot on which she was killed. I am of the view that this was intentionally done by the informant in order to remove the evidence of murder. Thus, the abovesaid circumstance creates doubt about the entire prosecution case. There are some other circumstances also which go to prove that the witnesses are liars.

20. Admittedly, the night on which the occurrence had taken place was a dark night and as per the evidence of the witnesses, there was no means of identification except the torch light flashed by the informant (P.W.3) but this flashing of torch light by the informant is doubtful story in view of the evidence of P.Ws. 1, 2, 3 and 7. In this regard, the evidence of the above-mentioned witnesses is that as soon as the appellants came at the place of occurrence they surrounded the cot of the informant on which the informant was sleeping along with his mother. It is also the evidence of the witnesses that the appellants had come to the house of the informant with determination to kill the informant alone. In such circumstance, it is unbelievable that the informant who remained flashing torch light on the face of each and every appellant was spared by the appellants although they had come with determination to kill him. I have already incorporated the evidence of the prosecution witnesses in the above paragraphs which will show that while the informant and his mother were in sleeping position, the appellants started firing. In such circumstance, it is unbelievable that the informant would have escaped unhurt when he had no place to

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hide himself or could have concealed himself from the eyes of the assailants. The evidence is otherwise and the evidence of the prosecution witnesses shows that the informant was not beyond the reach of the accused-appellants and he was also assaulted by one of the accused with lathi fitted Bhala receiving some superficial injury. I am not in a position to understand that when the appellants had gone to the house of the informant with the object of killing him why the appellants spared him and thought that the object had been achieved by causing a superficial injuries on his person. Likewise, it is also not understandable that as soon as the appellants came at the place of occurrence all the five appellants surrounded the cot of the informant as well as the cot of his brother whose cot was just beside the cot of the informant's cot (vide paragraph 28 of P.W.2), then how P.W.1 could manage to escape from the place of occurrence with some simple type of firearm injuries. This circumstance also creates doubt about the prosecution case.

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21. The evidence of P.Ws.2 and 7 that they saw the occurrence from a distance of about 50 yards is very unbelievable in view of the fact that the night was dark. Their evidence that they fled away in the Palani of Ram Nath Singh (appellant) and from there they saw Ram Nath Singh and other accused persons committing the crime of murder is also very doubtful in view of the fact that both the witnesses were knowing full well that appellant Ram Nath Singh was taking active part in the commission of murder, then how P.Ws. 2 and 7 thought that Palani of appellant Ram Nath will be a safe place for them.

22. The possibility that some other persons might have committed murder can also not be ruled out as I have quoted above the evidence of the prosecution witnesses which revealed that they had enmity with several persons like Swami Nath, Islam Mian, Abhiraj Rai and Devendra Prasad. Not only this,

the evidence of the abovesaid witnesses also shows that they had enmity with his own bother-in-law Daroga Singh who was the husband of P.W.7 Manata Devi and it appears from the evidence of P.Ws. 1, 2, 3 and 7 that they all had given evasive reply about the death of Daroga Singh, the husband of P.W.7 Manata Devi. P.Ws. 1, 2 and 3 have denied the suggestion that they wanted to grab the land of Dargo Singh in collusion with P.W.7 Manata Devi but P.W.7 Manata Devi admitted that she had executed a registered deed of sale with respect to her land in favour of her brother. I am of the view that the defence has been able to create doubt that the cause of murder of the deceased Panmatto Devi might have been the strained relationship of Manata Devi with her husband Dargo Singh.

23. All the witnesses have stated that they had identified the accused-appellants in the torch light flashed by the informant but at paragraph 18, P.W.9 (I.O.) has deposed that none of the prosecution witnesses had handed over any torch to him. This goes to show that the torch was never the means of identification and if this means of identification goes away then the statement of the prosecution witnesses that they identified the appellants in the torch light stands falsified.

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24. The learned State counsel has submitted that due to the non-production of torch the prosecution case will not fail as the Apex Court on several occasions has observed that the eye sight of the persons having village backgrounds is very strong and they can identify the known persons even in dark night and so, the identification of the appellants even in the absence of torch light cannot be disbelieved. In this regard he has placed reliance upon the decision reported in 2002 S.C.C. (Criminal) Page 1686 (Barosi & others, appellants Vs. State of M.P., respondent), and (1998)9 S.C.C. 238 (Nathuni Yadav & ors. Vrs.State of Bihar & anr.). Considering these facts of this case, I am afraid that this argument of State Counsel cannot be accepted in view of the fact that not a single

witness has deposed that he had identified the appellants even before the informant flashed torch light nor it is the case of the prosecution. Under such circumstance, the argument of defence counsel that witnesses having village background are generally competent to identify the accused-appellant even in dark night is not acceptable and so the decisions referred above are not applicable in this case.

25. With regard to the manner of occurrence, I have to say that there are material contradictions between the evidence of the witnesses on this point also. According to paragraph 19 of the evidence of P.W.1, as soon as his mother saw the accused persons she got up from the cot. The first firing was done before his mother got up from the cot. As per the prosecution case, first firing did not hit anybody. He has further deposed that second and third firings were done when his mother was running away and at that time, his mother was at a distance of 2-3 steps west from the cot. On this point, P.W.2 at paragraph 21 of his evidence has deposed that at the time of firing the informant as well as the deceased both were sleeping on the cot and after first firing his mother caught hold of appellant Ram Nath Singh and his mother did not try to run away rather she caught hold of Ram Nath Singh. At paragraph 18 P.W.2 has deposed that all the accused persons had surrounded the cot of his brother and his mother while both the persons were sleeping on the cot. At paragraph 19 he has categorically stated that his mother did not sustain any firearm injury on her person while she was sleeping on the cot rather she sustained injuries while she was standing. P.W.3, who is the informant of his case, has deposed on this point that on hearing the sound of explosion of bomb his mother woke up and asked him to flee away in the house and while he was running away appellant Ram Nath Singh tried to catch hold of him then his mother caught hold of Ramnath Singh and simultaneously pushed P.W.3 (informant) then first firing was done by Krishna

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which did not hit anybody. The second and third firings were shot by appellant Ramnath Singh and Krishna Singh and both the firings hit his mother. The third firing done by Krishna Singh also hit his mother. If this statement of P.W.3 is taken to be true then it appears improbable that when the deceased was catching hold of appellant Ram Nath, how Krishna Singh would have fired without taking risk of Ramnath being injured. Moreover, in that case the deceased could have sustained firearm injuries at her back and not on her abdomen. So, the evidence of P.Ws. 1, 2 and 3 that appellants Krishna and Ramnath had shot at the deceased when the deceased was catching hold of Ramnath by his waist does not appear to be acceptable. The evidence of P.W.3 (informant) at paragraph 29 also falsifies the prosecution case that the appellants had opened fire while he was catching hold of appellant Ramnath Singh. His statement at paragraph 29 is that when P.W.3 (informant) sustained lathi blow on his person, at that time his mother was at a distance of only one step and was covering him (**Mujhe Jhhanpe Hui Thi).**This statement of P.W.3 shows that till the assault on P.W.3 by the appellants his mother had not sustained fire-arm injuries but this is not the prosecution case. Moreover, in the event of providing cover to the informant, she might have sustained injuries on her back and not in her abdomen. P.W.7, who is the own sister of the informant, has deposed at paragraph 20 of her evidence that while her brother Vidya Singh and her mother were sleeping on the cot, Krishna Singh opened fire. She has again deposed that the blood had fallen on the cot as well as on the bedsheet lying over the cot. Thus, it appears that P.W.7 has contradicted the evidence of other witnesses that when the deceased was in standing position, she had sustained injuries on her person. Thus, from the evidence of the above said witnesses I find that there is material contradiction in the

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evidence of the prosecution witnesses so far the manner of occurrence is concerned.

26. The evidence of the doctor (P.W.11) and the post mortem report (Ext.5) shows that P.W.11 had found charring around wound of the deceased and according to his evidence, the presence of charring around the wounds indicates that the firing was done from a distance of about 3-4 feet but the evidence of the prosecution witnesses is not consistent on this point. According to P.W.1, the first firing was done from a distance of about 10 steps and the second and third firings were also done from the said distance. According to P.W.2, the first firing was done from a distance of 4-5 hands and thereafter the second and third firings were done. P.W.7 at paragraph 31 has deposed that her mother had been shot at from a distance of 10 steps. The above evidence of P.Ws. 1, 2 and 7 establishes that firing was not done from a very close range but from some distance. Under such circumstances, the presence of charring around the wound on the person of the deceased creates doubt that the witnesses are not truthful.

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27. The learned State Counsel has submitted that only on the ground that the ocular evidence is not in conformity with the medical evidence, the prosecution case cannot be disbelieved. He submitted that charring and blackening of skin around the injuries does not necessarily lead to the inference that the firing was done from a very close range. In this regard, the learned State Counsel has placed reliance upon the decision reported in 1999 Supreme Court Cases (Criminal) Page 261 (Mohan Singh & ors, Appellants Vrs. State of M.P., respondent). Since the fact of this case is quite different from the fact of the decision cited above, as such I am of the view that the decision referred above will not apply in this case.

28. There is one more circumstance which creates doubt about the manner of occurrence is the presence of fire-arm’s injury

on the front part of the body of Yogendra Singh (P.W.1). According to the evidence of Dr. R.B. Choudhary (P.W.10), he had found all the injuries on the person of Yogendra Singh on the front of his body including the pellet injuries on his person which goes to establish that P.W.1 Yogendra had sustained injuries while he was facing the assailants but it is the consistent evidence of P.Ws. 1, 2 and 3 that while he was running away from the Sahan and when he was about to enter into the Palani he sustained fire-arm injury and fell down on the door of the Palani (Paragraph 20). According to his evidence at paragraph 17, the said Palani is at a distance of about 20/25 steps north of his house. The above statement of P.W.1 itself shows that he cannot sustain fire-arm injuries on his front side of the body rather in that case the injury will be on his back. This circumstance also establishes that the manner of occurrence, as disclosed by the witnesses, is not correct.

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29. The above scrutiny of the evidence of the prosecution witnesses establishes that the prosecution witnesses are not trustworthy and on the basis of their testimony the conviction of the appellants is not safe. Moreover it appears that the informant and witnesses have got motive to falsely implicate the appellants as they have grudge against the appellants. P.W.1 at paragraph 14 has admitted that he is on inimical terms with appellant Krishna Singh due to dispute over money transaction. At paragraph 25 he admits that he has land dispute with appellant Ram Nath as he has constructed his Bathan over his land and has also purchased the land of Ramdeo Barhai which land he had intended to purchase. At paragraph 35 P.W.1 has admitted that there was 144 Cr.P.C. proceeding in between appellant Bishwanath Singh and informant Bidya Singh and in that case decree was passed in favour of appellant Bishwanath. Other witnesses have also accepted these facts.

Thus, the above facts disclose that the informant had motive to falsely implicate the appellants due to previous enmity.

30. It appears from the record that the appellant Ramnath Singh had taken a plea of alibi and in this regard he has also examined defence witnesses but I do not feel it necessary to make discussion on this plea of the appellant as I have found above that the prosecution case is not acceptable and since it is settled principle that prosecution must stand on its own leg in order to prove its case but since the prosecution has failed to prove its case, I have no necessity to discuss the evidence of the defence witnesses.

31. On the basis of the discussions made above, I find and hold that the prosecution has miserably failed to prove the charges levelled against the appellants and as such, the conviction and sentence passed against the appellants cannot be upheld and the same are liable to be set aside.

32. In the result, I find merit in this appeal and as such, the same is hereby allowed and the judgment and order of conviction and sentence passed against appellants, namely, Krishna Singh and Ram Nath Singh under Section 302 of the I.P.C. are set aside. Likewise, the conviction and sentence passed against appellant Rama Singh under Sections 302/149 of the I.P.C. and under Section 307 of the I.P.C. and under Section 27 of the Arms Act are also set aside. Likewise, the conviction and sentence passed against the appellants, namely, Bishwanath Singh and Binda Singh under Section 302/34 of the I.P.C. and under Section 323 of the I.P.C. are also set aside and the appellants are acquitted of all abovementioned charges for which the appellants were convicted by the trial court. The appellants are on bail, as such they are discharged from the liabilities of their bail bonds.

(Syed Md. Mahfooz Alam, J.)

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Sudhir Kumar Katriar, J.

I agree

(Sudhir Kumar Katriar, J.)

Patna High Court, Patna
The 21st August, 2008
N.A.F.R. (B.T.)

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